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No.

In the

Supreme Court of the United States

OCTOBER TERM, 1979

ROBERT THOMAS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Robert Thomas, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered on October 19, 1979.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois, wherein this cause was consolidated with two other matters under the caption *People* v. *Odie Cross,* is unreported and is printed in Appendix A hereto, *infra,* page 1a. The opinion of the Appellate Court of Illinois, Fifth Judicial District, is unreported and is also printed in Appendix

A hereto, *infra,* page 15a. The relevant Orders entered by the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, are unreported and are printed in Appendix A hereto, *infra,* page 24a.

JURISDICTION

The judgment of the Supreme Court of Illinois (Appendix A, *infra,* page 1a) was entered on October 19, 1979. The jurisdiction of the Supreme Court is invoked under Title 28, United States Code, Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

Whether the action of the trial court coerced the defendant into entering a plea of guilty to unlawful delivery of a controlled substance in violation of his right to due process as guaranteed by the 5th and 14th Amendments to the United States Constitution; and whether the action of the trial court and of defense counsel deprived the defendant of his right to effective assistance of counsel as guaranteed by the 6th and 14th Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment (V)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of

law; nor shall private property be taken for public use, without just compensation.

Amendment (VI)

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and the cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

On October 13, 1974, Petitioner was arraigned and entered a plea of not guilty to three charges of unlawful delivery of a controlled substance in violation of the Illinois Controlled Substance Act, Illinois Revised Statutes, 1973, Chapter 56½, Section 1401 et seq. Due to the pendency of *People* v. *Mayberry,* 63 Ill. 2d 1, 345 N.E.2d 97 (1976), which challenged the constitutionality of the penalty provisions of the Illinois Controlled Substances Act,

supra, Petitioner's case was not called to trial until May 12, 1976, following the disposition of *Mayberry.*

During the 19 months between the arraignment and the trial date, Petitioner remained free on bond and was represented by private counsel. Also, during this period, private counsel took no action on behalf of Petitioner.

At the commencement of the court's proceedings at 9:00 a.m. on May 12, 1976, Defendant had not yet arrived in Court, although he had been advised on the previous day of the date and time at which he was to appear. Defense counsel advised the Court that he was having a difficult time communicating with the Defendant and filed a Motion requesting an examination to determine Petitioner's fitness to stand trial. This was the first pleading filed by defense counsel to date. (Tr. Hearing and Plea, 2-5).

As a result of Defendant's absence, the trial court revoked Defendant's bond pending resolution of the case. (Tr. Hearing and Plea, 5). After a short recess, the proceedings resumed at 10:30 a.m. with the Defendant present. The court called Defendant as a witness on the Motion for a fitness examination. Defendant told the court that he had been present in another part of the courthouse at 9:00 a.m. but was unable to locate the courtroom, and offered to bring in a witness to corroborate this. (Tr. Hearing and Plea, 25) When asked whether he understood the charges against him, Defendant responded, "I'm totally disturbed about the whole thing. I'm not sure about what's happening. . ." (Tr. Hearing and Plea, 8-9). Defendant later indicated that he did understand the charges but was having difficulty with his attorney. The Court then asked Defendant whether he had discussed the case with counsel and the following exchange took place:

"A. I . . . As I said before, I'm really confused about this whole thing.
Q. Well, what's your confusion?
A. I don't understand the nature of what's going on.
Q. Do you understand your cases are being called to trial?
A. No, I didn't know that until about two minutes ago.
Q. All right. Well, you know it now. You know that your case, the first case is up for trial in this Court?
A. Yes, sir.
Q. All right. Now, do you have any witnesses that you wish to have subpoenaed to testify in your behalf?
A. I can't think of any right now, but maybe later, I'm not sure.
Q. You were here in this Courtroom yesterday, were you not?
A. I was here in the building, and I came in the Courtroom for a short time.
Q. All right. What did you think you were doing here yesterday?
A. I don't know.
Q. No one's told you that your cases were coming to trial?
A. That's right.
Q. You knew these cases were pending against you, didn't you?
A. Yes, sir.
Q. How long have they been pending against you?
A. I guess six or eight months or so.
Q. And during that period of time, have you had an opportunity to consult your lawyer?
A. Not in any detail regarding the trial or any preparation for it at all.
Q. If you were given time, could you, is there any problem with you assisting Mr. Storment in the trial of your case?
A. I can't seem to understand him sometimes."
(Tr. Hearing and Plea 16-17)

The trial judge then explained the charges to Defendant and the consequences of conviction. Defendant indicated he was unprepared for trial and again stated he was unclear as to the nature of the proceedings. The trial judge advised the Defendant that he would give him a few days to consult with his attorney, but that his bond would be revoked and Defendant placed in custody to insure his appearance in court. After a discussion over the revocation of Defendant's bond, the court asked defense counsel, Mr. Storment, if he was ready to proceed with trial and he stated that although he was, he believed that Defendant was not.

The trial judge then stated:

> ". . . I would give you an opportunity to consult with your client at this time and you can make a determination, the two of you together as to whether he wants to begin trial now or if he would prefer to begin tomorrow, Friday, or Monday. But it will be no later than Monday. But I don't feel I have any choice at this time but to revoke his bond and see to it that he is here when we are ready to try this case. I'll give you fifteen minutes to consult with Mr. Thomas, and then you can come back into my chambers and advise me whether you want to go to trial today, or tomorrow, Friday, or Monday. And, Dave, Mr. Thomas will be in your custody, you can call a uniformed deputy also to assist you on that." (Tr. Hearing and Plea 28).

The trial court again denied defense counsel leave to withdraw his appearance and denied Defendant's request for new counsel, because the court did not know if he had funds to pay for another attorney, even though the court was told Defendant had posted cash bonds which had not been assigned to his attorney. (Tr. Hearing and Plea 29).

Just prior to granting a recess, the trial court stated:

> "These indictments date back, these activities date back to 1973, and the indictments date back to 1974. And here we are rapidly approaching three years since the indictments. And this man has been free on bond almost the entire time. And I think it's time now that we dispose of these cases. He's been free on bond since August 5, 1974 on the one charge, and I'm not going to grant a continuance to hire a new lawyer. Mr. Thomas may not like what you tell him, and he may not like the prospect of going to trial or facing conviction, but that's neither the State's nor the Court's fault, nor yours. It's just a fact of life. These are Class 1 felonies and in the event he is convicted, he is going to the penitentiary. I have no discretion in the matter. So, we'll take a fifteen minute recess until 11:15. (Tr. Hearing and Plea 30-31).

Following the recess, Defendant's motion for determination of fitness was withdrawn and Defendant entered a plea of guilty to the charge. The court rescinded its bond revocation order and continued the matter for sentencing. (Tr. Hearing and Plea 32, 43-44). Prior to sentencing, Defendant filed a new motion to determine fitness which was denied following a hearing. Defendant was then sentenced to serve a period of four to six years in the Illinois Department of Corrections in accordance with the State's recommendations.

On September 3, 1976, Defendant filed a timely motion to withdraw his guilty plea and vacate judgment, which was argued and denied on October 1, 1976. (C. 30-33, Tr. Motion to Vacate 1-22).

Defendant filed his Notice of Appeal on October 26, 1976, (C. 38). The Appellate Court of Illinois, Fifth Judicial District, in an unpublished Order, reversed the trial

court and remanded the cause for a new trial. (See Appendix A, *infra,* p. 15a).

The State of Illinois was subsequently granted leave to appeal to the Supreme Court of Illinois. That court consolidated this cause with two others under the caption *People* v. *Odie Cross,* and on October 19, 1979, reversed the Appellate Court and affirmed the trial court as to the case of *People* v. *Robert Thomas.* (See Appendix A, *infra,* p. 1a).

Your Petitioner respectfully requests this Honorable Court to issue a Writ of Certiorari to review the ruling of the Illinois Supreme Court.

REASONS FOR GRANTING WRIT

Your Petitioner's plea of guilty was induced by the coercive measures taken by the trial court in conjunction with the ineffective assistance rendered by defense counsel.

The Defendant in a criminal case has a "constitutional right to plead not guilty." *Brookhart* v. *Janis,* 384 U.S. 2, 7 (1966). This right necessarily entails a right to persist in his plea without undue influence being brought upon him to alter his plea.

As this Court stated in *Johnson* v. *Zerbst,* 304 U.S. 1019, 1028 (1938):

> "A waiver is ordinarily an intentional relinquishment of a known right or privilege. The determination of whether there has been an intelligent waiver . . . must depend, in each case upon the particular facts and circumstances surrounding that case. . ."

Thus, the waiver of your Petitioner's right to persist in his plea of not guilty must be viewed in light of all the circumstances present herein.

A coerced plea is repugnant to the due process clause of the Fifth Amendment. *Waley* v. *Johnston,* 317 U.S. 964 (1942). In order to determine whether a guilty plea satisfies the due process requirement of the Fifth Amendment, it must be measured against the following:

> "The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant" *North Carolina* v. *Alford,* 400 U.S. 25, 30 (1970) (citations omitted)

Moreover, the record must demonstrate that the plea of not guilty was intelligently and understandingly rejected in order for the waiver to be constitutionally valid. *Boykin* v. *Alabama* 395 U.S. 238, 242 (1969).

The totality of the circumstances from which voluntariness must be determined, *Schneckloth* v. *Bustamonte,* 412 U.S. 218, 227, (1973), reveals that in the instant case, your Petitioner was precluded from making a "voluntary and intelligent choice among the courses of action open to him." *Boykin* v. *Alabama,* supra at 242.

The circumstances attendant to your Petitioner's guilty plea were as follows: The trial court unjustifiably revoked his bond and ordered that he remain in custody until disposition of his case. The trial court refused Petitioner's request for new counsel after he advised the court he could not communicate with his attorney. The trial court refused counsel's request to withdraw after he stated that he was unable to communicate with his client. After stating that your Petitioner would be allowed to retain new counsel if monies were available, the trial court withdrew this offer even though it was made aware of the existence of $5000.00 in unassigned bonds. Consequently, following a delay of 19 months your Petitioner was compelled to proceed to trial without counsel of his choosing. See *Powell* v. *Alabama,* 287 U.S. 45, 53 (1932).

Each of the foregoing acts severely and impermissibly restricted the alternatives available to Petitioner. The fact that, following 19 months of inaction by defense counsel, your Petitioner was allowed only 15 minutes for the purpose of making a decision, demonstrates that his choice—to plead guilty—was not a voluntary choice among all the alternatives to which due process entitled him.

Rather, it demonstrates that the coercive measures of the trial court severely limited the choices available to this criminal defendant in violation of the due process clause of the Fifth Amendment.

Petitioner submits further that it is basic that a criminal defendant's rights to due process under the Fifth Amendment, and assistance of counsel under the Sixth Amendment are binding on the States through the Fourteenth Amendment, *Gideon* v. *Wainwright,* 372, U.S. 335 (1962). It is also recognized that the right to counsel is the right to effective assistance of counsel *McMann* v. *Richardson,* 397 U.S. 759 (1970).

In *Powell* v. *Alabama,* 287 U.S. 45 (1932) this Honorable Court stated:

> "(D)uring perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself. *Powell* v. *Alabama,* supra at 57 (citations omitted)

Here Petitioner was without the effective assistance of counsel "in any real sense" during the crucial period between arraignment and trial which spanned 19 months. No pleadings were filed, no discovery was sought and no attempts were made by defense counsel to interview witnesses. Furthermore, the attorney waited until the very moment of trial before advising the trial court of his inability to communicate with Petitioner and to secure his cooperation in preparing his defense.

Even if defense counsel were deemed to be competent, the action of the trial court, after learning of counsel's inability to communicate with Petitioner, rendered counsel's assistance meaningless. The granting of a 15 minute conference wherein counsel and Petitioner, who had difficulty communicating, were to prepare for trial made a mockery of Petitioner's constitutional right to effective assistance of counsel.

The actions of the trial court denying Petitioner his right to effective assistance of counsel, coupled with the other coercive actions of the trial court directed against Petitioner, were such as to deny him the opportunity to make a knowing and voluntary choice among those alternatives to which he was constitutionally entitled under the Due Process Clause.

CONCLUSION

WHEREFORE, Petitioner prays that a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A

OPINIONS BELOW

Docket Nos. 51201, 51230, 51256 cons.—
Agenda 32—May 1979.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. ODIE CROSS, JR., Appellee.—THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. TOM HAYWOOD, Appellee.—THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. ROBERT THOMAS, Appellee.

MR. JUSTICE KLUCZYNSKI delivered the opinion of the court:

The primary issue raised in these three consolidated cases is whether the appellate court properly held that entrapment exists as a matter of law whenever a government informer supplies a controlled substance to an individual who is later prosecuted for the sale of that substance. Defendant Odie Cross, Jr., was convicted in a jury trial of the unlawful delivery of less than 30 grams of a substance containing heroin (Ill. Rev. Stat. 1975, ch. 56½, par 1401(b)) and was sentenced to a term of imprisonment of two to six years, defendant Tom Haywood was convicted in a bench trial of the unlawful delivery of 30 grams or more of a substance containing lysergic acid diethylamide (LSD) (Ill. Rev. Stat. 1975, ch. 56½, par. 1401(a)(8)) and was sentenced to a term of imprisonment of four years to four years and one day, and defendant Robert Thomas pleaded guilty to a charge of unlawful delivery of 30 grams or more of LSD (Ill. Rev. Stat. 1973, ch. 56½, par. 1401(a)(8)) and was sentenced to a term of imprisonment of four to six years. All proceedings took place in the circuit court of St. Clair County. The appellate court reversed the convictions of defendants Cross (63 Ill. App. 3d 628),

Haywood (63 Ill. App. 3d 352), and Thomas (61 Ill. App. 3d 1112 (Rule 23 order)) because of its findings of entrapment, and we allowed the State's petition for leave to appeal in each case.

Although the facts in these cases differ in most respects, they each involve the prosecution of an individual who claims to have been supplied with a controlled substance by a government informer and who, after selling the substance, was arrested. Defendant Thomas failed to raise this entrapment issue in his motion to withdraw his guilty plea, however, referring only to a deprivation "of a crucial defense." The argument is waived. (58 Ill. 2d R. 605(d).) Our discussion of entrapment is therefore limited to defendants Cross and Haywood. They raised the defense of entrapment in the circuit court, and it therefore became incumbent upon the State to prove beyond a reasonable doubt that entrapment did not occur (*People* v. *Dollen* (1972), 53 Ill. 2d 280, 284). In attempting to meet this requirement, the State offered evidence of the defendants' predisposition to commit the offense.

In reversing the judgments of conviction, the appellate court interpreted this court's decisions in *Dollen* and *People* v. *Strong* (1961), 21 Ill. 2d 320, as establishing a *per se* rule of entrapment whenever a government informer supplies a controlled substance to an individual who is later prosecuted for the unlawful delivery thereof. Although this application of the *Dollen* and *Strong* opinions may well be justified in light of language contained therein, we do not believe that the court in *Strong* intended to create a *per se* rule, and the language in *Dollen* so interpreting *Strong* is in error.

In *Strong*, the court approved of the entrapment defense in a prosecution for unlawful possession and sale of heroin where the defendant's "only sale was of narcotics supplied to him by an informer in the employ of the government." (*People* v. *Strong* (1961), 21 Ill. 2d 320, 326.) Implicit in this holding was a finding that the

defendant was not predisposed to commit the offense. It there appeared from the evidence that the drug sale in question was the defendant's sole experience with the unlawful distribution of heroin:

> "The defendant testified that the informer, Reynolds, brought a package to his room and left it there without explaining what it contained, saying that he would return in about 45 minutes. Reynolds did return in that time accompanied by [Federal agent] Johnson. Reynolds asked the defendant to give the package to Johnson, which he did, whereupon Johnson gave the defendant $50. The defendant said that the money should go to Reynolds but Reynolds asked the defendant to keep the money and bring it to him that evening. He testified that he took the money to Reynolds later that day. The defendant testified that he did not knowingly sell agent Johnson any narcotics because he was not in the business, did not have any narcotics, did not know where to obtain any and had nothing to do with narcotics." (21 Ill. 2d 320, 323.)

In reaching its decision, however, the court said:

> "While we are sympathetic to the problems of enforcement agencies in controlling the narcotics traffic, and their use of informers to that end, we cannot condone the action of one acting for the government in supplying the very narcotics that gave rise to the alleged offense. We know of no conviction for sale of narcotics that has been sustained when the narcotics sold were supplied by an agent of the government. This is more than mere inducement. In reality the government is supplying the *sine qua non* of the offense." 21 Ill. 2d 320, 325.

Dollen, too, is somewhat ambiguous because it interprets *Strong* as espousing a *per se* rule of entrapment, yet at the same time the court's opinion inquires deeply

into the question of whether the defendant was predisposed to commit the offense. The court says in one passage, "In *Strong,* we held that a conviction for the unlawful sale of narcotics cannot stand when the informer supplies the drugs." (53 Ill. 2d 280, 284.) Shortly thereafter, however, the court states:

> "In the present case the testimony of defendant and Elmer Davis clearly indicates that defendant [a taxi dispatcher] innocently gained possession of the narcotics during a routine inspection of the vehicle driven by [informer] Wright. Defendant apparently had no prior history of narcotics involvement until this time. Wright, who immediately after the discovery suggested that he could find a buyer, also possessed an unparalleled opportunity to place the package in his vehicle. Moreover, the testimony of agent Norton and defendant confirms that Wright actively negotiated the price of the narcotics. It was also definitely established that at the approximate time of the discovery of the drugs Wright harbored resentment against the defendant." 53 Ill. 2d 280, 284.)

Evident from the latter passage is the court's concern that an innocent man had been convicted, thus casting doubt on its discussion of *Strong*.

The problem of interpreting *Strong* and *Dollen* has also caused the appellate court some difficulty, resulting in a split of authority on the question of whether a *per se* rule governs. (Compare *People* v. *Cross* (1978), 63 Ill. App. 3d 628, 632, *People* v. *Haywood* (1978), 63 Ill. App. 3d 352, 353, *People* v. *Thomas* (1978), 61 Ill. App. 3d 1112 (Rule 23 order), and *People* v. *Spahr* (1978), 56 Ill. App. 3d 434, 439, with *People* v. *Arbogast* (1976), 41 Ill. App. 3d 187, 190, *People* v. *Hesler* (1976), 39 Ill. App. 3d 843, 851, and *People* v. *Hatch* (1964), 49 Ill. App. 2d 177, 184.) This confusion has led us to consider the subject anew.

In our reconsideration of the subject and in light of the ever-growing drug problem, we are not so sure that

the court should be so critical, as it was in *Strong,* of governmental action in infiltrating drug rings, and we do not believe that the courts should foreclose the possibility that a conviction of a predisposed individual could be sustained even though the government did furnish the controlled substance. The offense in question here is the unlawful delivery of a controlled substance and, although the government may have supplied the substance, the critical inquiry is whether the "criminal purpose" of *selling* these substances originated with the defendants (Ill. Rev. Stat. 1975, ch. 38, par. 7-12). By supplying an individual with controlled substances, the government is merely facilitating or providing the opportunity for the individual to make an unlawful delivery. This is not entrapment under our entrapment statute (Ill. Rev. Stat. 1975, ch. 38, par. 7-12). Any contrary statement in *Strong,* decided before enactment of the statute, should no longer be followed.

The entrapment statute, based in large part on the leading case of *Sorrells* v. *United States* (1932), 287 U.S. 435, 77 L. Ed. 413, 53 S. Ct. 210 (see Ill. Ann. Stat., ch. 38, par. 7-12, Committee Comments, at 439 (Smith-Hurd 1972)), provides:

> "A person is not guilty of an offense if his conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of such person. However, this Section is inapplicable if a public officer or employee, or agent of either, merely affords to such person the opportunity or facility for committing an offense in furtherance of a criminal purpose which such person has originated." (Ill. Rev. Stat. 1975, ch. 38, par. 7-12.)

It thus contemplates consideration of whether the idea for the crime originated with the defendant; predisposition as well as governmental involvement must therefore be considered. (See *Hampton* v. *United States* (1976), 425 U.S. 484, 48 L. Ed. 2d 113, 96 S. Ct. 1646; *United States* v.

Russell (1973), 411 U.S. 423, 36 L. Ed. 2d 366, 93 S. Ct. 1637; *People* v. *Hatch* (1964), 49 Ill. App. 2d 177, 183-85.) The language in *Dollen,* which interprets *Strong* as eliminating the need to consider predisposition, likewise should no longer be followed. Consideration of an individual's predisposition is required, and, for that purpose, a complete review of the facts of Cross' and Haywood's cases is necessary. Because we believe that the State proved beyond a reasonable doubt that Cross and Haywood were predisposed to commit the offense of unlawful delivery of a controlled substance, we reverse the judgments of the appellate court in their cases.

On October 7, 1976, defendant Cross was alone in the East St. Louis home of Henry Pickett, a friend and government informer. Cross testified that he had gone there with Pickett to help him with some work. Pickett and his wife had left temporarily, and Pickett had asked Cross to hold a plastic vial containing five capsules until he returned. Cross testified that he knew that the capsules contained heroin. He further testified that he had seen Pickett every day in the preceding year and had been in his home to perform home repair and decoration services.

While in Pickett's home, Cross responded to the knock of a special agent of the Drug Enforcement Administration, Archie Luss, who was looking for Pickett to assist in finding an individual. According to Luss, Cross said that Pickett was not home and Cross asked if he could take care of any business for Luss. Luss testified that "business," in his mind, meant a heroin sale. Luss also testified that he had not told Pickett that he was coming and that he did not know Cross and did not expect to meet him.

Luss returned to his car, where agent James McDowell was waiting, and the two then and there conceived of a plan whereby they would record the serial number of two of McDowell's $10 bills and offer them to Cross in exchange for heroin. Luss and McDowell did not anticipate

a sale and did not have official funds to use. Luss, in fact, testified that no sale would have occurred if they had not gone looking for Pickett and if they had not had some money of their own.

Luss returned to Pickett's home and, according to Cross, said, "I want to cop two buttons." Cross testified that he knew that "buttons" meant heroin. Cross then produced two pink capsules from a vial in his right pants leg, which he then exchanged for the $20. According to Cross' testimony, $10 per capsule was charged because that was Pickett's usual rate. Following the sale, the agents performed a field test on the pills and detected opium alkaloids.

After conducting the test, Luss again returned to ask Cross for five more buttons. Although Cross later testified that he would have sold five if he had had that many, he responded that he only had three. Upon handing them to Luss, he was arrested. Luss testified that, following the arrest, Cross said that he was selling buttons for Pickett.

The State did not call Pickett to rebut Cross' claim that Pickett had given him the heroin, and, under *Strong,* this gives rise to an inference against the State (21 Ill. 2d 320, 325). Under the circumstances, however, little significance should attach to this fact because the sale here in question is not at all similar to the "set up" which was involved in *Strong* and which led the court to announce that an inference would arise against the State for its failure to call the informer. The evidence clearly indicated Cross' predisposition to commit the offense, and the government's involvement in the sale was prompted only by Cross' offer to do business. The jury's verdict and the circuit court's judgment of conviction entered thereon are amply supported by the evidence.

Cross contends, however, that his conviction should nonetheless be reversed because the circuit court refused to instruct the jury on entrapment. The circuit court specifically held that defendant had not met the qualifications for the defense of entrapment, and it therefore re-

fused the tendered instruction. We find no error in the ruling. The State's evidence established beyond a reasonable doubt that Cross was predisposed to commit the offense and that the idea for the sale originated with him. *People* v. *Cash* (1963), 26 Ill. 2d 595, 597-98; *People* v. *Guagliata* (1936), 362 Ill. 427, 433.

The evidence against defendant Tom Haywood is, we believe, also sufficient to sustain the circuit court's finding of guilt. Haywood was charged by indictment with the unlawful delivery of 50 grams of LSD on October 9, 1973, and the State's evidence supported the allegation that the sale occurred on the date specified. On that day, according to the testimony of Illinois Bureau of Investigation (IBI) agent Lonnie Inlow, Haywood sold Inlow 1,000 tablets of LSD for $725. Inlow arranged the sale with the assistance of an informer, Dor Zierenberg.

Defendant's wife, Pamela, and a friend, Frank Herron, testified that Zierenberg supplied the LSD in question. Herron further testified that Zierenberg asked defendant to act as a source in making the sale. Mrs. Haywood testified, however, that the sale to which they were referring occurred in May of 1973, and Herron testified that it took place in the early summer of 1973.

In rebuttal for the State, agent Inlow testified that he made only one purchase from defendant prior to October 9, 1973, that being on March 15, 1973. This was corroborated by IBI expenditure records identified by IBI assistant administrator Russell Ford.

As to defendant's claim that Zierenberg supplied the LSD, Inlow testified that he did not know if this was so, but he also testified that Zierenberg once had admitted selling drugs. Zierenberg was not called to testify.

Once the entrapment defense was raised, the State introduced evidence of defendant's predisposition to commit the offense. Agent Inlow in particular spoke of defendant's familiarity with drugs. He testified that, in the course of the March 15, 1973, sale, defendant indicated

that the LSD was Berkeley (California) brown acid. At the October 9, 1973, sale, defendant is said to have represented that the LSD then sold was "as good in quality as good purple haze and it wasn't cut with strychnine which makes it a lot better." Inlow also testified that defendant expressed a desire to get good dope into the Belleville area and that defendant offered a price break for regular, large quantity sales. Defendant's wife also testified that defendant used LSD and marijuana, although she also said that he had not been using these substances recently and did not sell them.

Notwithstanding discrepancies in the testimony of State and defense witnesses as to whether the sale occurred in May or October of 1973, defendant contends that the defense of entrapment was raised and that the State failed to prove beyond a reasonable doubt that entrapment did not exist. While we agree that the defense was raised, we do not agree that the State failed to meet its burden of proof. The circuit court, sitting without a jury, weighed the evidence and drew inferences therefrom; it considered the credibility of the witnesses and found against defendant. The circuit court's judgment is well supported by the evidence, and we will not disturb that judgment since no reasonable doubt clearly manifests itself. *People* v. *Fleming* (1971), 50 Ill. 2d 141, 145-46; *People* v. *Guido* (1962), 25 Ill. 2d 204, 208.

Defendant Haywood, however, correctly argues that he is entitled to be resentenced. He points out, with support in the record, that the circuit court was under the misapprehension that it was prohibited from imposing a term of periodic imprisonment and that it felt compelled to impose a 4-year minimum sentence. The circuit court apparently acted in reliance on the 1975 version of the sentencing provisions of the Unified Code of Corrections (Ill. Rev. Stat. 1975, ch. 38, par. 1005-5-3(d)(1), which had been recently amended to exclude periodic imprisonment as an available form of punishment for the offense committed by Haywood, a violation of section 401(a) of

the Illinois Controlled Substances Act (Ill. Rev. Stat. 1975, ch. 56½, par. 1401(a)). The sentencing law in effect on the date on which Haywood committed the offense, October 9, 1973, did provide for the option of periodic imprisonment (Ill. Rev. Stat. 1973, ch. 38, pars. 1005-5-3(d)(1), (d)(2)), and Haywood is entitled to the application of that law. (Ill. Rev. Stat. 1975, ch. 131, par. 4).

Although we have ruled that defendant Thomas has not preserved his entrapment argument for review, other issues concerning the validity of his guilty plea are raised in his appeal which do require consideration. The offense to which defendant Thomas pleaded guilty was the unlawful delivery of 40.1 grams of LSD on April 24, 1973, one of three charges for which he was indicted.

Following arraignment on October 13, 1974, the circuit court stayed proceedings pending a decision in *People* v. *Mayberry* (1976), 63 Ill. 2d 1, involving a challenge to the sentencing provisions applicable to defendant Thomas. The case eventually was set for trial on May 12, 1976, at 9 a.m. Defendant was late and at 10:30 the court again called the case with defendant then present.

At the outset of the proceedings, defendant said that he was not sure of the nature of the charges, but questioning by the court revealed that he was cognizant of the indictments and their contents. Defendant also stated that he did not consult his attorney in detail about the upcoming trial and that he had trouble understanding the attorney. He did later state, however, that he had met with the attorney on the previous day for an hour or an hour and a half, discussing the charges and possible pleas.

Defendant then indicated that he was ready for trial, but not that day. Defense counsel also expressed his readiness for trial, but expressed his belief that defendant was not. The court therefore granted defendant "a few days" to confer with counsel and to prepare for trial, but specified that trial would in no event be postponed more than five days. The court also ordered bond revoked pending trial, citing defendant's failure to timely appear.

The court then ordered a 15-minute recess, during which time defendant was to decide which day trial would commence.

At this point defendant asked the court if he could have time to obtain different representation. His attorney admitted that he was experiencing difficulty counseling defendant, but the court denied any further continuance for the purpose of substituting attorneys.

During the recess which followed, defendant decided to enter a guilty plea, and an agreement was negotiated whereby defendant would plead guilty to one of the three charges, and the State would dismiss remaining charges and recommend a four- to six-year term of imprisonment. When the case was again called, the court ordered bond reinstated, and it began questioning defendant about his decision to plead guilty.

The court first asked if defendant had discussed the case with his attorney, and he indicated that he had. The court then asked him if he wanted more time to consider his decision, and he indicated that he did not. When asked if he was satisfied with his attorney, he responded affirmatively.

The court then questioned defendant about his awareness of the nature of the charges, potential sentences, and parole. The court also enumerated the rights waived by pleading guilty and asked, "[A]re you willing to give up each and every one of those rights to enter this plea?" After consulting with his attorney, defendant replied, "Yes." The court finally assured itself that the plea was not the product of threats or promises, excepting those promises contained in the plea agreement.

The prosecutor then read a statement of the exact charges into the record for the purpose of supplying a factual basis for the plea:

> "Your Honor, on April 23rd, 1973, Agent Inlow approached the mobile home of Mr. Thomas, entered

> the mobile home of Mr. Thomas, [and] at that time Agent Inlow inquired of Mr. Thomas if he had any LSD for sale. Mr. Thomas responded in the affirmative. Mr. Thomas walked into the kitchen area, reached into the top of a refrigerator, removed a quantity of light, yellow powder, indicated to the Agent that this was lemon [mesc] for sale, received $70.00 and then delivered to Agent Inlow the powder. The Agent then took the powder, had it analyzed, and the analysis indicated that it was 40.1 grams of Lyseric Acid Diethylamide, commonly referred to as LSD."

The judge asked defendant if he sold the LSD as alleged, and defendant answered "I did, and I was given it by the person who was there with [IBI agent] Inlow * * *." The court then accepted the plea.

Defendant's first challenge to the validity of the plea is that a factual basis was lacking. (See 58 Ill. 2d R. 402(b).) He contends that the defense of entrapment was raised by telling the judge that someone with the undercover agent had supplied the LSD. As a consequence, he argues, a factual basis was lacking or, at least, the circuit court should have inquired further into the possibility that entrapment had occurred. We disagree on both points.

Our initial problem in accepting the position of defendant is that his statement at the plea proceedings was made in passing, added only after he admitted committing the offense as charged. Whether the circuit court recognized this statement as a claim of entrapment we do not know, and we could not find fault with the court if it did not.

Even assuming that the court was properly apprised of the possibility of entrapment, the record before the court clearly indicated that defendant was predisposed to commit the offense, therefore making any further inquiry into entrapment unnecessary. In addition to the statement of facts supplied by the prosecutor, the court also had before

it the IBI reports pertaining to the offense, as well as the other two indictments for the unlawful delivery of 195.4 and 503.3 grams of LSD. The IBI reports were especially indicative of predisposition, showing defendant's familiarity with drug terminology and paraphernalia and his expressed desire to do business in the future with IBI agent Inlow.

The circuit court's duty was to assure itself that a factual basis for the plea existed, not whether defendant was proved guilty beyond a reasonable doubt, and we do not believe that the possibility of the defense of entrapment rendered the guilty plea defective. Defendant was represented by counsel, and the plea was fully explained. (See *People* v. *Covington* (1970), 45 Ill. 2d 105, 110; see also *People* v. *Garrett* (1977), 46 Ill. App. 3d 592, 596-97; *People* v. *Terry* (1975), 30 Ill. App. 3d 713, 714-16; *People* v. *Williams* (1975), 26 Ill. App. 3d 41, 43; *People* v. *Arnold* (1974), 18 Ill. App. 3d 95, 98.) We do not agree that the circuit court was required to do more.

Defendant Thomas' final contention, which the appellate court found unnecessary to address, is that his plea was improperly induced by the circuit court's decisions to revoke bond and to deny substitution of attorneys. Because we believe that the court's ruling were within its discretion, we find no merit to defendant's argument. As to the circuit court's bond revocation order, defendant's tardy appearance on May 12, 1976, justified the action. As to the court's refusal to allow substitution of attorneys, the court reasonably could and, in fact, did find that defendant was engaging in dilatory tactics. Significant in this respect is the fact that defendant had ample time, more than three years, between the alleged sale and the date set for trial, May 12, 1976, in which to prepare. Also important is that defendant had met with counsel the previous day, and, when entering his plea, expressed satisfaction with the attorney. We find no ground for reversal in this argument. *Cf. People* v. *Bratu* (1970), 46 Ill. 2d 143, 146 (reversal not required despite the defen-

dant's claim that counsel coerced his guilty plea where evidence showed only that the attorney properly advised the defendant of the likelihood of conviction and the gravity of potential sentences); *People* v. *Pratt* (1970), 46 Ill. 2d 99, 103-04 (reversal not required despite the defendant's claim of inadequate representation where a guilty plea represented an intelligent choice among alternatives and no prejudice was shown).

The appellate court's judgments are reversed and the circuit court's judgments are affirmed, except that the sentence of defendant Haywood is vacated and that cause is remanded to the circuit court for reconsideration of the sentence.

51201 — Appellate court reversed; circuit court affirmed.

51230 — Appellate court reversed; circuit court affirmed in part and vacated in part; cause remanded.

51256 — Appellate court reversed; circuit court affirmed.

No. 76-475

IN THE

APPELLATE COURT OF ILLINOIS

Fifth District

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

vs.

ROBERT THOMAS,
Defendant-Appellant.

Appeal from the Circuit Court of St. Clair County.
Honorable ROBERT L. GAGEN, *Judge Presiding.*

G.J. MORAN, J.

O R D E R
Filed Aug. 14, 1978

Defendant Robert Thomas pleaded guilty to an indictment of unlawful delivery of a controlled substance and was sentenced to a term of 4 to 6 years. He appeals from the trial court's denial of his motion to vacate his plea of guilty.

On October 13, 1974 defendant was arraigned and pleaded not guilty to three charges of unlawful delivery of a controlled substance. (Ill. Rev. Stat. 1973, ch. 56-1/2, par. 1401, et seq.) Defendant's case was not brought to trial until May 12, 1976 because of the pendency of *People* v. *Mayberry,* 63 Ill.2d 1, 345 N.E.2d 97, a case in which the Supreme Court reversed a decision of the circuit court of St. Clair County holding that the graduated penalty provisions of the Controlled Substance Act were unconstitutional. Defendant was free on bond during the nearly two-year period between his arraignment and the proceeding on May 12, 1976. Although defendant was represented by private counsel during this period, no actions

were taken by counsel on defendant's behalf until the May 12 proceeding.

Defendant was not present at the beginning of the May 12 proceeding although defense counsel informed the court he had told defendant about the 9:00 a.m. hearing on the preceding day. Counsel also stated that he and defendant were having a difficult time communicating and filed a motion for an examination to determine defendant's fitness to stand trial. As a result of defendant's absence the trial court revoked bond pending resolution of the case. The court then took a short recess and resumed at 10:30 a.m. with defendant in attendance. Defendant was called as a witness by the court on the motion to determine his fitness to stand trial. Defendant explained that he had been in the court house at 9:00 a.m. but was unable to locate the specific court room. When asked whether he understood he was charged with delivery of a controlled substance, defendant responded, "I'm totally disturbed about the whole thing, I'm not sure about what's happening • • • ." Defendant later indicated that he did in fact understand the charge but was having some difficulty with his attorney. The court then asked defendant whether he had discussed the charges with his attorney and the following exchange took place:

"A. I . . . As I said before, I'm really confused about this whole thing.

Q. Well, what's your confusion?

A. I don't understand the nature of what's going on.

Q. Do you understand your cases are being called to trial?

A. No, I didn't know that until about two minutes ago.

Q. All right. Well, you know it now. You know that your case, the first case is up for trial in this Court?

A. Yes sir.

Q. All right. Now, do you have any witnesses that you wish to have subpoenaed to testify in your behalf.

A. I can't think of any right now, but maybe later, I'm not sure.

Q. You were here in this Courtroom yesterday, were you not?

A. I was here in the building, and I came in the Courtroom for a short time.

Q. All right. What did you think you were doing here yesterday?

A. I don't know.

Q. No one's told you that your cases were coming to trial?

A. That's right.

Q. You knew these cases were pending against you, didn't you?

A. Yes, sir.

Q. How long have they been pending against you?

A. I guess six or eight months or so.

Q. And during that period of time, have you had an opportunity to consult your lawyer?

A. Not in any detail regarding the trial or any preparation for it at all.

Q. If you were given time, could you, is there any problem with you assisting Mr. Storment in the trial of your case?

A. I can't seem to understand him sometimes."

The trial judge then explained the charges to defendant and the consequences of conviction. Defendant indicated he was unprepared for trial and again stated he was unclear as to the nature of the proceedings. The trial judge advised defendant that he would give him a few days to consult with his attorney but that his bond would be revoked and defendant placed in custody to insure his appearance in court. After a discussion over the revocation of defendant's bond, the court asked defense counsel, Mr. Storment, if he was ready to proceed with trial and the following exchange occurred.

"Mr. Storment: I'm ready for trial, but I don't think my client is ready for trial.

The Court: I think the main part of the confusion that has arisen here, I'm sure this man is concerned about going to the penitentiary, I would be too, anyone would be. If that's what's going to be. I think maybe the fact that he may have been told four years on each charge may concern him to the point where he thinks he might be doing twelve years instead of four years, I don't know. But in the first instance, under the statute, I am entitled to make preliminary inquiry and there has been nothing stated here that's raised a bona fide doubt in my mind about this man's fitness to stand trial. I think Mr. Thomas does understand what he's charged with. I think he is not only capable of cooperating with you, I think he's willing to cooperate with you in forming a defense in this case. I think his problem is, at least from what I understand him to have said, is his concern about being called to the courthouse and told his case is ready, and then being advised that he's facing penitentiary time. Now, I'm not trying to put words into his mouth, but that's what I read from the situation. But I am concerned about his appearing in this Court, now that he does know, it's very obvious that this man did not know until yesterday or perhaps even this morning that he faces mandatory jail time in the event he's convicted of one or all three of these charges. I am concerned now about his availability for trial. I will start his case right now if that's what you and he want. However, if he wants to have a few days to confer with you or the rest of today to confer with you, that's fine, but his bond is going to be revoked and he's going to be held with out bond until this matter is disposed of. Now, I would not continue this case any later than Monday. I would force the issue on Monday where we would have a trial. But I am perfectly willing and available to have a trial on

this case beginning immediately. And I would give you an opportunity to consult with your client at this time and you can make a determination, the two of you together as to whether he wants to begin trial now or if he would prefer to begin tomorrow, Friday, or Monday. But it will be no later than Monday. But I don't feel I have any choice at this time but to revoke his bond and see to it that he is here when we are ready to try this case. I'll give you fifteen minutes to consult with Mr. Thomas, and then you can come back into my Chambers and advise me whether you want to go to trial today, or tomorrow, Friday, or Monday. And, Dave, Mr. Thomas will be in your custody, you can call a uniformed deputy also to assist you on that.

The Defendant: Your Honor, may I speak?

The Court: Yes, sir.

The Defendant: In view of what you just said, I would . . . I need some time to consult another attorney so I can understand exactly what I am doing. I'm not sure that I'm ready to do whatever we need to do, I'm lost, I really am, and I need to talk to someone else to advise me.

The Court: The question, Mr. Thomas, is whether or not you understand what you are charged with, and you can cooperate with your counsel, and you can assist your counsel in your case.

Mr. Storment: Your Honor, may I ask him a question. Do you feel at this time that I can't adequately represent you, do you feel that, would you rather have. . . .

Mrs. Gossage: Objection, Your Honor. This is purely dilatory.

Mr. Storment: Well, I'm having a real problem representing him.

The Court: Well, I'm not going to let you withdraw. As I understand, there are bond assignments in this case.

Mr. Storment: That is no bond assignment in this case.

The Court: In any of these three cases, have you been paid?

Mr. Storment: I have received some money.

The Court: Well, then I can't permit you to withdraw. I can't even in good conscience appoint a Public Defender to represent a man that's already paid a lawyer.

Mr. Storment: But how can I represent him if he doesn't want me to represent him? If he wants to consult another attorney, what am I going to do about that?

The Court: Well, if he gives me proof that he has the funds to hire another lawyer, fine. If not, you're going to represent him.

Mr. Storment: I have no bond assignment.

The Court: Unless there's proof that he has funds to hire another lawyer, you're it, as far as these cases are concerned. And I would suggest that you take the fifteen minutes that I have given you to go over again with your client the details of what he's charged with, what he's facing, and make a determination as to whether you want to go to trial today or Monday, or any days in between. But it's going to be between now and Monday, we're going to dispose of these cases. These indictments date back, these activities date back to 1973, and the indictments date back to 1974. And here we are rapidly approaching three years since the indictments. And this man has been free on bond almost the entire time. And I think it's time now that we dispose of these cases. He's been free on bond since August 5th, 1974, on the one charge, and I'm not going to grant a continuance to hire a new lawyer. Mr. Thomas may not like what you tell him, and he may not like the prospect of going to trial or facing conviction, but that's neither the State's nor the Court's fault, nor yours. It's just a fact of life. These are Class 1 felonies and in the event he is convicted, he is going to the penitentiary. I have no discretion in the matter. So we'll take a fifteen minute recess until 11:15."

After a brief recess Mr. Storment withdrew the motion for determination of fitness to stand trial and defendant entered a plea of guilty. The trial court admonished the defendant pursuant to Supreme Court Rule 402 (Ill. Rev. Stat. 1975, ch. 110A, par. 402) and accepted defendant's plea and the State's recommended sentence of 4 to 6 years. Sentencing was postponed and the court rescinded its order revoking defendant's bond in accordance with the plea agreement. Prior to formal judgment and sentencing a hearing on defendant's fitness to stand trial was held at defendant's request. The trial court determined that defendant was fit to stand trial and sentenced defendant to a term of 4 to 6 years.

Defendant retained new counsel and on September 3, 1976 a motion to withdraw the guilty plea and vacate judgment was filed in defendant's behalf. Defendant contends his plea of guilty was not voluntary. It is generally held that where a plea of guilty represents a voluntary and intelligent choice among alternative courses of action available to a criminal defendant, the plea is valid despite the fact that defendant may have been deprived of important constitutional rights prior to entering the plea. (*People* v. *Brown*, 41 Ill.2d 503, 244 N.E.2d 159; *People* v. *Phelps*, 51 Ill.2d 35, 280 N.E.2d 203.) Thus, a guilty plea will be upheld even though influenced by an improperly coerced confession, if the record indicates that the plea was voluntary. (*McMann* v. *Richardson*, 397 U.S. 759, 25 L.Ed.2d 763, 90 S.Ct. 1441.) This general rule does not apply, however, in cases in which a prior deprivation of constitutional rights has an abiding impact on the voluntariness of a plea of guilty. (*McMann* v. *Richardson*, 397 U.S. 759, 767, 25 L.Ed.2d 763, 771.) The defendant vigorously contends that the trial court's refusal of his request to obtain other counsel denied him his right to be represented by counsel of his own choice and that this denial of his constitutional rights coupled with the trial court's revocation of bond forced him to proceed with counsel whom he did not want and therefore

coerced him into pleading guilty. We need not consider this contention because another error in the record requires reversal.

Defendant also contends that the trial court committed reversible error by failing to determine that there was a factual basis for his plea prior to entering final judgment as required by Supreme Court Rule 402(c) (Ill. Rev. Stat. 1975, ch. 110A, par. 402(c)), which provides:

> (c) Determining Factual Basis for Plea. The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea."

After a factual basis for the plea was read into the record by the Assistant State's Attorney, the trial court inquired of the defendant as follows:

> "The Court: Mr. Thomas, on April 23, 1973 did you deliver to a Lonnie Inlow, you may not have known him by that name, but did you deliver 40.1 grams of a substance containing LSD?
>
> The Defendant: I did, and I was given it by the person who was there with Mr. Inlow, that's true, yes."

The defendant was asserting that the government informant, Daniel Hocking who had accompanied Agent Inlow, had supplied him with the drugs which he subsequently delivered to Agent Inlow. Therefore, in his response to the trial court's question defendant set forth the affirmative defense of entrapment.

In the recent case of *People* v. *Cross,* (No. 77-179, filed July 28, 1978) this court held that a conviction for selling a contraband substance cannot be sustained if the substance is supplied by the government. Appellee contends that the failure to comply with Supreme Court Rule 402(c) regarding the factual basis of defendant's plea was waived because it was not included in defendant's motion to withdraw his guilty plea. Appellant answers

that this claim of error was included in paragraph 6 of his motion to withdraw his guilty plea. We would recognize this error even if it was not raised in appellant's motion, because the failure to comply with Rule 402(c) constituted a substantial defect in the guilty plea. See *People* v. *Porter* (No. 14651, 4th Dist. 7/14/78); *People* v. *Lamparter,* 56 Ill.App.3d 823, 371 N.E.2d 997.

Under the rationale of *People* v. *Edmonds,* 15 Ill.App. 3d 1073, 305 N.E.2d 346, we remand this case to the circuit court of St. Clair County with directions to permit the defendant to plead anew.

Finding that an opinion in this cause would have no precedential value we reverse and remand this cause to the circuit court of St. Clair County pursuant to our authority under Supreme Court Rule 23 (Ill. Rev. Stat. 1977, ch. 110A, par. 23).

REVERSED AND REMANDED.

JONES, C.E. and WINELAND, E.H., *J.J.,* concurs.

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

No. 74-CF-552

PEOPLE OF THE STATE OF ILLINOIS,

vs.

ROBERT THOMAS,

Defendant.

COMPETENCY HEARING AND SENTENCING
(Filed AUG 5 1976)

Aug. 5,
1 9 7 6

Case called for hearing. People represented by Roza Gossage, Assistant State's Attorney, Defendant present in open court and represented by Michael Pritzker, his attorney. Defense counsel having filed a Petition to Hold Competency Hearing, presents evidence in support of said Motion. Evidence presented by the State. The Court, having considered all the evidence in the case, finds the defendant to be competent. As per plea agreement entered in this case, the Court hereby sentences the defendant to the Illinois Department of Corrections for a period of not less than four years nor more than six years there to remain until discharged according to law. Mittimus ordered to issue.

/s/ Hon. Robert L. Gagen
Circuit Judge

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

No. 74-CF-552

PEOPLE OF THE STATE OF ILLINOIS,

vs.

ROBERT THOMAS,

Defendant.

Charge: Unlawful Del. of Cont. Sub.

ORDER
(Filed Oct 1 1976)

Oct. 1,
1 9 7 6

Case called for hearing on Motion to Vacate and Set Aside Plea. People represented by Roza Gossage, Assistant State's Attorney. Defendant represented by Marvin Glass, his attorney. Motion presented and argued. Motion denied.

/s/ Hon. Robert L. Gagen
Circuit Judge

APPENDIX B

TABLE OF CASES

Boykin v. Alabama, 395 U.S. 238 (1969).
Brookhart v. Janis, 384 U.S. 2 (1966).
Gideon v. Wainwright, 372 U.S. 335 (1962).
Johnson v. Zerbst, 304 U.S. 1019 (1938).
McMann v. Richardson, 397 U.S. 759 (1970).
North Carolina v. Alford, 400 U.S. 25 (1970).
Powell v. Alabama, 287 U.S. 45 (1932)
Schneckloth v. Bustamonte, 412 U.S. 218 (1973).
Waley v. Johnston, 317 U.S. 964 (1942).